



# Department of Justice

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## JUSTICE DEPARTMENT ASKS COURT TO MODIFY 1950 ASCAP SETTLEMENT

### **Change Allows ASCAP's Members to Collect Royalties for Home Taped Music in Canada, France and Germany**

WASHINGTON, D.C. -- The Department of Justice asked the federal district court in Manhattan today to modify a 1950 consent decree that will allow the American Society of Composers, Authors, and Publishers (ASCAP) to collect royalties for home taping of copyrighted music in Canada, France and Germany.

ASCAP--a performing rights society that licenses and collects fees for the use of music written or published by its members--currently collects and distributes similar royalties for its members each time American consumers make copies of the music in their homes. The royalties flow from a fund that manufacturers of home tape recorders and blank tapes pay into, and this cost is passed on to the consumer when they buy these products.

In 1950, the Department reached a settlement with ASCAP resolving an antitrust complaint that ASCAP divided markets with certain foreign performing rights societies and agreed not to do business with other competitors. Some language in the decree, which was written long before home taping was possible,

prohibited ASCAP from collecting royalties from foreign performing rights societies.

ASCAP asked the Department to propose the modifications so that it could distribute the royalties, which are now being collected by foreign societies, to its members.

"At the time the settlement was entered, ASCAP participated in a world-wide confederation of performing rights societies that engaged in global misconduct, including boycotts and agreements not to compete," said Joel I. Klein, Assistant Attorney General in charge of the Department's Antitrust Division. "Since 1950, this misconduct has ceased, and the earlier provisions we now seek to modify were affecting American music rights-holders' ability to receive royalties for the foreign use of their work."

The Department's decision to seek the proposed modifications to the decree governing ASCAP's foreign activities is a result of a comprehensive review of various consent decrees governing the activities of ASCAP and Broadcast Music Inc. (BMI), another major performing rights organization in the U.S. The Department's review of the consent decrees governing ASCAP's and BMI's domestic activities is ongoing.

The Audio Home Recording Act of 1992 required manufacturers of home taping devices and blank tapes to pay a certain amount on each sale of their products to a fund. ASCAP then draws royalties from that fund for its members. The fund assumes a certain portion of blank tapes and recorders will be used by consumers to reproduce copyrighted music for their personal use.

ASCAP began collecting and distributing royalties for home taping in this country in 1993, after the U.S. consented to and the court approved similar modifications to a separate decree relating to ASCAP's domestic activities.

Today the Department also asked the court to modify provisions that restrict ASCAP's activities with foreign performing rights societies, including its ability to enter into cross-licensing arrangements with those societies. Other provisions in the decree, which prohibit ASCAP from interfering with its members' right to license music directly to users outside the U.S., remain in force and will not be affected by the proposed modifications.

The Department requested that the court not implement the proposed modifications until the Department has sought comment from interested parties. The Department is free to revoke its consent to the changes if comments persuade it to do so.

The proposed modifications to the consent decree will be published in the Federal Register, together with the Department's supporting memorandum. Any person may submit written comments to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW, Room 300, Washington, D.C. 20530.

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